

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**JAMES D. JOHNSON, et al**

**PLAINTIFFS**

**V.**

**CIVIL ACTION NO. 3:04cv251LN**

**HALEY BARBOUR, et al**

**DEFENDANTS**

**MOTION TO EXTEND STAY OF PROCEEDINGS DUE TO THE IMPACT OF  
HURRICANE KATRINA**

**COME NOW**, the Defendants, by and through counsel, and file this their Motion to Extend Stay of Proceedings due to the impact of Hurricane Katrina and would show the Court the following:

1.

Because the current stay is set to expire on October 24, 2005, the Defendants respectfully request an expedited ruling on this Motion. Since this Motion is self explanatory, the Defendants further request that this Court waive the requirement that a supporting Memorandum of Authorities be filed.

2.

On September 8, 2005, an Order was entered staying this lawsuit and suspending all deadlines previously set by the Court until October 24, 2005. *See*, Order attached hereto as Exhibit "A". The Order sets forth that at the conclusion of the forty-five day stay, the Defendants may request an extension of the stay.

3.

As is well known, and a matter of which the Court may take judicial notice, Hurricane Katrina, a disaster of historic proportions, did substantial damage to the State of Mississippi. As a result, the Federal Emergency Management Agency (FEMA) issued a Disaster Declaration designating fifty-two of Mississippi's eighty-one counties in need of Public and/or Private assistance. *See*, FEMA Disaster Declaration map setting forth those counties attached hereto as Exhibit "B".

4.

In the wake of this disaster, the responsibilities of the Governors Office and the Mississippi Department of Human Services ("MDHS") increased many times over. MDHS has been occupied with locating and accounting for its county employees, accounting for foster home families, accounting for children in group homes and shelters, cataloguing lost buildings and the extent of damage to buildings still standing, and establishing and manning sites for disaster relief for victims. *See*, Affidavit of Richard A. Berry attached hereto as Exhibit "C."

5.

MDHS employees manned 97 shelters containing as many as 18,000 persons at any one time, as well as four shelters housing approximately 400 persons with special needs. The MDHS state office has been occupied with facilitating relief efforts and opening an additional 13 shelters for evacuees from New Orleans.

6.

MDHS established and maintained disaster food stamp program sites in twenty-three counties and four regional centers for the purpose of taking and processing emergency food

stamp applications. Those sites were manned through October 9, 2005, with approximately 182,842 applications being taken, many of which are still being processed.

7.

To conduct the disaster relief program, it was necessary that MDHS employees from every division be assigned to the effort. The Division of Family and Children Services (DFCS) is the division of MDHS that is primarily responsible for the care of children in custody. With the exception of one employee per county, every DFCS employee was assigned to the hurricane relief effort and disaster program. Those employees did not resume full time duties with DFCS until the week of October 11, 2005.

8.

In addition to the relief effort and disaster program, MDHS had to establish contact with the foster families and over 3,000 children in its custody. The number of displaced families and unpredictable communications made this a difficult and time consuming process. During October, November, and December 2005, every available DFCS employee is needed to re-new face to face contact with foster families and children; evaluate extra or emergency benefits that are needed; and, implement a means to take care of those needs by the end of this year.

9.

Given these dire circumstances and the hurricane recovery effort, MDHS employees and staff will not be available for the remainder of 2005 to participate in the captioned litigation, *James D. Johnson, et al. v. Haley Barbour, et al.* MDHS employees will be unable to give depositions or participate in the production of documents or other discovery. Every available MDHS employee is needed in order to get the agency fully operational and complete the evaluation of clients by the end of this year.

10.

Federal regulations require that MDHS submit quarterly status reports on the progress of implementing MDHS's Child Welfare Program Improvement Plan (PIP). The first quarterly report was due at the end of August, 2005, but could not be completed or submitted because of the hurricane. The Department of Human services has suspended all deadlines relative to the PIP through the end of this year because of Hurricane Katrina's impact on MDHS.

11.

In their Motion to Amend Order Staying Litigation, filed subsequent to entry of the present stay, the Plaintiffs state that "[H]urricane Katrina has caused devastation of historic proportions to the State of Mississippi and elsewhere. The State and DHS have been burdened with additional demands that we can only imagine. The damage caused and the enormous recovery effort *warrant a significant extension of the Case Management Order deadlines.*" *See*, Plaintiffs' Motion to Amend Order Staying Litigation, p. 1 (emphasis added). The immediate focus of MDHS must be on recovery efforts and additional demands caused by Hurricane Katrina. The Defendants agree with Plaintiffs that a significant extension of Case Management Order deadlines is warranted.

**WHEREFORE, PREMISES CONSIDERED**, the Defendants respectfully request that the stay of this action, including all discovery, be extended through the end of this year. This Motion is made in good faith and not for the purpose of unnecessary delay. Because of the importance of this Motion to the Defendants, the undersigned counsel is prepared to submit oral argument or present testimony should the Court so desire.

**THIS**, the 17<sup>th</sup> day of **October, 2005**.

Respectfully submitted,

**HALEY BARBOUR**, as Governor of the State of  
**Mississippi; DONALD TAYLOR**, as Executive Director  
of the Department of Human Services; and  
**BILLY MANGOLD** as Director of the Division of  
Family and Children's Services

BY: /s/ Dewitt L. (Rusty) Fortenberry, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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I also certify that I have this day served a copy of the foregoing on the following non-ECF participants by United States Mail, postage prepaid:

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**SO CERTIFIED**, this the **17th** day of **October, 2005**.

\_\_\_\_\_/s/ Dewitt L. (Rusty) Fortenberry, Jr.\_\_\_\_